

Mar 15 2022

Office of Appeal Hearings  
Dept. of Children and Families

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

[REDACTED]  
[REDACTED]  
[REDACTED]

APPEAL NO. 21N-00088

PETITIONER,  
VS.

ADMINISTRATOR  
[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on January 11, 2022 at 2:36 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: [REDACTED] Daughter  
[REDACTED] Son

For Respondent: [REDACTED] Executive Director

**STATEMENT OF ISSUE**

Petitioner timely appealed Respondent’s action to discharge her from [REDACTED] [REDACTED] (the “Facility”). Respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

The hearing was initially scheduled for December 16, 2021 but was rescheduled because Petitioner was not in receipt of Respondent's evidence packet.

Petitioner was not present for the hearing. Present as a witness for Respondent was [REDACTED] Director of Social Services.

Petitioner did not submit any exhibits. Respondent submitted documentation which was accepted into evidence and marked as Respondent's Exhibits one ("1") through seven ("7").

At approximately 2:52 p.m., [REDACTED] and [REDACTED] were dropped from the conference call. All communication ceased until 2:57 p.m. when [REDACTED] and [REDACTED] reconnected to the hearing.

#### **Petitioner's Position**

Petitioner took the position that she was admitted for a short term stay but her condition deteriorated, and her stay transitioned to a longer period of care. She argued that Medicare was supposed to pay for 100 days of care, and she did not want to apply for Medicaid if it was not needed. Petitioner further asserts that communication with the Facility was lacking and or difficult at times. She does not disagree that an application for Medicaid was not filed nor that any payments were made on her account.

#### **Respondent's Position**

Respondent took the position that despite several communications between the Facility, Petitioner, and her family, Petitioner has an outstanding balance in which payment in full has not been received nor has Medicaid been secured.

**FINDINGS OF FACT<sup>1</sup>**

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner entered the Facility on [REDACTED] 2021 and remained in the care of the Facility at the date of the hearing. Initially, her period of care intended to be short term for rehabilitation. At admission, Petitioner was covered by Humana Medicare Replacement. (Resp't Ex. 3 at 5; Hr'g R.)
2. Benefits under Humana Medicare Replacement terminated April 22, 2021. (Resp't Ex. 3 at 1.) Petitioner then transitioned to Medicaid pending. (Hr'g R.)
3. On March 31, 2021, April 19, 2021, April 20, 2021, and April 22, 2021, Respondent spoke with Petitioner's family regarding her coverage under Humana Medicare, discharge plans, and the need to apply for Medicaid. (Resp't Ex. 1 at 1.)
4. The facility will apply for Medicaid for a resident if requested documentation is provided to complete the application process. (Hr'g R.)
5. On May 10, 2021, Petitioner was changed from Medicaid pending to private pay because requested documentation was not received to file a Medicaid application. (Resp't Ex. 1 at 1; Resp't Ex. 4.)
6. On May 11, 2021, Respondent issued its first collection notice for non-payment for a balance due of \$21,528.00. (Resp't Ex. 7 at 1.)

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<sup>1</sup> Citations within the Findings of Fact, Controlling Law and Conclusions of Law in this order follow Florida Rules of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

7. On May 20, 2021, Respondent met with Petitioner's family to discuss the balance owed on Petitioner's account and the need for her to apply for Medicaid. (Resp't Ex. 1 at 1; Resp't Ex. 2 at 2.)

8. Petitioner received the following invoices: (Resp't Ex. 6 at 1-6.)

June 1, 2021 – Balance Due	\$21,528.00
July 1, 2021 – Balance Due	\$31,200.00
August 1, 2021 – Balance Due	\$43,432.00
September 1, 2021 – Balance Due	\$52,792.00
October 1, 2021 – Balance Due	\$62,464.00 – copy mailed to daughter

9. On July 15, 2021, Respondent issued its second collection notice for non-payment for a balance due of \$43,432.00. (Resp't Ex. 7 at 2.)

10. On August 19, 2021, Respondent issued its third collection notice for non-payment for a balance due of \$52,792.00. (*Id.* at 3.)

11. Petitioner experienced a change in her condition. She was approved for coverage under Medicare Part A, at 100%, for the period September 14, 2021 through October 6, 2021. Coverage was then paid at 80% for the period October 7, 2021 through October 13, 2021, with the remaining 20% due as Petitioner's responsibility. (Resp't Ex. 1 at 1-2.)

12. On October 12, 2021, the Facility issued a Discharge Notice to Petitioner and her daughter informing them that Petitioner would be discharged from the Facility effective [REDACTED] 2021, due to non-payment of bill for services. (Resp't Ex. 5.)

13. Respondent continued, on several occasions, to discuss the need for Petitioner to apply for Medicaid and for family to submit requested documents in order for Respondent to file the application. (Resp't Ex. 1 at 2; Resp't Ex. 2 at 1-2.)

14. On November 1, 2021, Petitioner received an invoice for \$52,682.00, with a copy mailed to her daughter. The balance brought forward, \$62,464.00, was reduced by the Medicare coverage payments to reflect the reduced balance owed. (Resp't Ex. 6 at 7-8.)

15. On December 1, 2021, Petitioner received an invoice, with a copy mailed to her daughter, for \$73,991.00. (*Id.* at 9-10.)

16. On December 14, 2021, Respondent issued its fourth collection notice for non-payment for the total balance due of \$84,159.00. (Resp't Ex. 7 at 4-5.)

17. On December 14, 2021, Respondent received partial documentation from Petitioner's children regarding her assets. The information was incomplete for Respondent to file a Medicaid application. (Resp't Ex. 1 at 3; Resp't Ex. 7 at 6.)

18. On January 1, 2022, Petitioner received an invoice for \$84,159.00, with a copy mailed to her daughter. (Resp't Ex. 6 at 11.)

19. Petitioner received her monthly invoices and collection letters by hand delivery. (Hr'g R.)

20. Petitioner receives a net Social Security benefit of \$1100.00. (Hr'g R.)

21. To date, Petitioner has not applied for Medicaid benefits. (Hr'g R.)

22. Petitioner remains in the facility pending the hearing decision. She has not made any payments towards her account. Petitioner's outstanding balance to the Facility is \$84,159.00 and continues to accumulate. (Resp't Ex. 6 at 11; Hr'g R.)

### **CONTROLLING LAW**

23. Section 400.0255(15), Florida Statutes, provides the Department of Children and Families, Office of Appeal Hearings, jurisdiction over the subject matter of this

proceeding and the parties. This section further prescribes this order as the final administrative decision of the Department of Children and Families.

24. Title 42 Code of Federal Regulations (“C.F.R.”) Section 483.15 sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights:

...

(c) Transfer and discharge—(1) Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

**(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;** (emphasis added)

(F) The facility ceases to operate.

...

25. Section 400.0255, F.S., Resident transfer or discharge; requirements and procedures; hearings, states in part:

...

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending

physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.

...

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident's legal guardian or representative, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge...

...

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases.... Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form must state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council review the notice of discharge or transfer.

26. The Department of Health and Human Services, Centers for Medicaid and Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

A resident cannot be transferred for non-payment if he or she has submitted to a third-party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third-party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

### **CONCLUSIONS OF LAW**

27. Based on the evidence presented, the Facility has established that Petitioner is being discharged due to non-payment. This is one of the six reasons provided in federal regulations for which a nursing Facility may involuntarily discharge a resident.

28. According to the above authority, the Facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the Facility. As of the date of the hearing, Petitioner's balance owed to the Facility was \$84,159.00 and she has not applied for Medicaid.

29. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what she owes for her period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the Facility, including recommendations to secure Medicaid, to pay for this period of care. This is one of the six (6) reasons provided in federal regulations (Title 42 C.F.R. § 483.15) for which a nursing Facility may involuntarily discharge a resident. Respondent has met its burden of proof.

30. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The Facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the resident for a safe and orderly transfer or discharge from the Facility. The undersigned cannot and has not considered either of these issues. The undersigned has considered only whether the discharge is for a lawful reason.

31. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care Facility complaint line at (888) 419-3456.

**DECISION**

Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable Agency for Health Care Administration requirements.

**NOTICE OF RIGHT TO APPEAL**




The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the Facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, 2415 North Monroe Street, Suite I, Room 129, Tallahassee, FL 32303-4190. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. Petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 15 day of March, 2022,

in Tallahassee, Florida.



Shelly Goodfellow  
Hearing Officer  
2415 North Monroe Street  
Suite I, Room 129  
Tallahassee, FL 32303-4190  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To:  Petitioner  
 Respondent  
  
Agency for Health Care Administration  
